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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,264	05/17/2005	Kenichi Suzuki	000023-065	3874
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EXAMINER				
CHIRISS, JENNIFER A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
03/20/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary

Application No.

10/535,264

Applicant(s)

SUZUKI ET AL.

Examiner

JENNIFER A. CHRISS

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed December 14, 2007, have been entered and have been carefully considered. Claim 1 is amended, claims 2 – 3 and 8 – 15 are cancelled and claims 1 and 4 - 7 are pending. In view of Applicant's amendment to claim 1 requiring that the fiber has "substantially no crimps", the Examiner has withdrawn the rejection as being anticipated or obvious over Clark as detailed in the Office Action dated 9/18/07. The invention as currently claimed is not found to be patentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 4 - 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakajima et al. (US 6,274,237).

Nakajima et al. is directed to a potentially crimpable composite fiber and a nonwoven fabric using the same (Title).

As to claim 1, Nakajima et al. teach a composite fiber having a configuration as

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shown in Figures 1, 2 or 3 which would have symmetric points a and b about the center point and the compositions at a and b are the same as required by Applicant. The composite fiber has a first component comprising a polypropylene copolymer having a melting point ranging from 120 – 147 degrees C (column 1, lines 55 – 68) and a second component comprising polyethylene (column 3, lines 55 – 68). As shown in the Examples, the melting point of the first component is different than the second component (columns 9 - 14). Additionally, Nakajima et al. teach that the melt temperature of the second component is lower than the melt temperature of the first component (column 2, lines 20 – 30). Nakajima et al. notes that, if the area ratio of the first component is less than 35%, the shrinkage of the potential crimpable fiber is weakened and sufficient crimp cannot emerge (column 4, lines 60 - 65). The Examiner submits that Nakajima et al. teaches that the area ratio of the first component or the polypropylene copolymer component can be present in an amount less than 35% which would result in a fiber with “no crimps” as required by Applicant. Nakajima et al. teach that the composite fiber can be used to create a spunbonded fabric (column 5, lines 25 – 30 and see Examples 9 – 12). It should be noted that the first component may also contain polyethylene (columns 2 - 3) and, as a result, the two olefin-based polymers have a common polymer and can be considered “of the same kind”.

As to claim 5, Nakajima et al. teaches in Comparative Example 3 that the first component comprises co-PP and the second component comprises polypropylene (columns 11 – 12). Although relied upon Example is a Comparative Example, it should be noted that a reference may be relied upon for all that it would have reasonably

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suggested to one having ordinary skill the art

As to claims 6 – 7, Nakajima et al. teach that the nonwoven can be used in hygienic materials such as disposable diapers (column 6, lines 40 – 42). Nakajima et al. teach that the nonwoven can be layered with other nonwoven layers to create a composite material (column 6, lines 55 - 68).

As to claims 1 and 4, although Nakajima et al. does not explicitly teach the claimed polymer components having a difference of induction periods of strain-induced crystallization of 100 seconds or longer and the nonwoven has an extensibility at a maximum load of not less than 70% in the machine direction and/or in the cross machine direction, it is reasonable to presume that these properties are inherent to Nakajima et al. Support for said presumption is found in the use of like materials (i.e. Nakajima et al. teach a spunbonded fabric with no crimps made of sheath-core fibers having a first component and second component with the claimed chemistry, where the first component has a higher melting temperature than the second component). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present one the CLARK et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977). It is noted that the disclosure of the present application describe combinations of polymers having different MFR and different melting points; and polymers having different MFR and the same melting points as polymers having different induction periods of strain-induced crystallization. (as described in [0025]-[0028] of Pub. No.

2006/0052022 A1). It is the Examiner's position that the combinations described above meet the description provided, therefore, must have the claimed difference in induction periods of strain-induced crystallization.

Response to Arguments

5. Applicant's arguments with respect to claims 1 and 4 - 7 have been considered but are moot in view of the new ground of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. CHRISS whose telephone number is (571)272-7783. The examiner can normally be reached on Monday - Thursday, 8 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571 - 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. C./
Examiner, Art Unit 1794

/Ula C Ruddock/
Primary Examiner, Art Unit 1794

